IN THE HIGH COURT OF BOMBAY AT GOA
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CIVIL REVISION APPLICATIONS NO. 19 OF 2004 AND 20 OF 2004

CIVIL REVISION APPLICATION NO. 19 OF 2004

The Commissioner,
The City of Panaji Corporation,
Panaji, Goa. ...Petitioner

Versus

Shri Munna alias Mehboob
M. G. Bepari, age 40 years,
married, business, r/o
Manxer Bundh, Neogi Nagar,
Panaji, Goa. ...Respondent.

Shri S. S. Kantak, advocate for the petitioner.

Shri V. Menezes, advocate for the respondent.

CIVIL REVISION APPLICATION NO.20 OF 2004

The Commissioner,
The City of Panaji Corporation,
Panaji, Goa. ...Petitioner.

Versus

Omprakash Balaji Pahadia
Jain, r/o Neogi Nagar, Rua
de Orem, Panaji, Goa. ...Respondent.

Shri S. S. Kantak, advocate for the petitioner.

Shri V. Menezes, advocate for the respondent.

CORAM : S. A. BOBDE, J.

DATE : 23rd July, 2004

ORAL JUDGMENT

These revision applications can be disposed of together as they involve common questions. Admit. Returnable forthwith. By consent the revision applications are taken up for final hearing.

2. By these revision applications, the petitioner, the Commissioner of the City Corporation of Panaji, questions the Order dated 16th April, 2004, passed by the District and Sessions Judge, Goa. The main challenge is on the ground of jurisdiction. According to the petitioner, the learned District Judge has no jurisdiction to entertain an appeal against the order of demolition under Sub-section (3) and Sub-section (5) of Section 269 of the City of Panaji Corporation Act, 2002 (hereinafter referred to as "the Act" for short). In both these revision applications, the Commissioner issued a Show Cause Notice to the respondents in exercise of powers under Section 269 of the Act. This was followed by a final notice for demolition. This Notice of demolition was made under Section 269 (2) of the Act, which reads as under:-

> "S.269(2): If a building is erected or re-erected -
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> (a) without any sanction as required by section 256(1), or
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> (b) when sanction has been refused, or
>
> (c) in contravention of the terms of any sanction granted, or
>
> (d) when the sanction has lapsed under Section 262,
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> The Commissioner may by notice require the owner or owners to alter or demolish the building within such reasonable time as the Commissioner may think fit."

3. Aggrieved, the respondents appealed, under Section

269 of the Act to the District Court, North Goa, Panaji. The appeal purports to be an appeal under this Section. In the appeal the respondents have prayed for quashing and setting aside the final notice for demolition of the structure issued by the petitioner. The grounds of challenge raised also pertain to the legality of the final notice, which may also be described as an order of demolition. The petitioner raised a preliminary objection to the jurisdiction of the District Court to entertain the appeal against such a final notice or order of demolition. On 16th April, 2004, the District Court rejected the preliminary objection and held that the District Court is empowered to issue the injunction under Sub-sections (3) and (5) of Section 269 of the Act eventhough the appeal lies against a final notice or order of demolition under Section 358 (3) of the Act to the State Government. It is this Order that is impugned.

4. The only question, therefore, is whether the District Court has any jurisdiction to entertain an application for injunction against a final notice or order of demolition under Sub-sections (3) and (5) of Section 269 of the Act. Section 269 Sub-sections (3) and (5) of the Act read as follows:

> **S.269(3)** : If a person to whom notice has been given under the foregoing provisions of this section fails to comply with the notice before the expiry of twenty-eight days, or such longer period as the District Court, North Goa, Panaji, may on his application

> allow, the Commissioner - may pull down or remove the work in question, or effect such alteration therein as he deems necessary, and may recover from him the expenses reasonably incurred by the Commissioner in so doing.
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> **(5)** : Nothing in this section shall affect the right of the Corporation or any other person to apply to the District Court, North Goa, Panaji, for an injunction for the removal or alteration of any building on the ground that it contravenes any provision of this Act or of the bye-laws made thereunder, but if the building is one in respect of which plans have been deposited and the plans have been passed by the Commissioner or no notice of its rejection has been given within the prescribed period after the deposit thereof, and if the work has been executed in accordance with the plans, the Court on granting an injunction shall have power to order the Corporation to pay to the owner of the works such compensation as the Court thinks just, but before making any such order the Court shall cause the Commissioner, if already not impleaded as a party, to be joined as a party to the proceeding."

Sub-section (3) of Section 269 of the Act empowers the Corporation to pull down or remove the work in question if the person to whom a final notice has been given fails to do so on his own. This sub-section is not relevant here. The question is whether Sub-section (5) enables or provides for a remedy to a person against whom such a final notice of demolition has been given to apply to the District Court, North Goa, Panaji, for an injunction restraining the Corporation from giving effect to such final notice or for having a final notice set aside.

5. It must be noted that the District Court has, in the impugned Order, held that an appeal against such an order

of the Commissioner lies to the State Government, but an application for an injunction against such a final notice lies before it.

6. On a true construction of Sub-section (5), I am of the view that a person against whom a final notice for demolition has been issued is not entitled to apply for an injunction against a final notice of demolition issued by the Corporation in respect of the structure in question under that provision. In terms, the sub-section enables the Corporation or any other person to approach the District Court for an injunction "for the removal or alteration of any building", on the ground that it contravenes any provision of the Act. This provision only provides for a remedy to the Corporation or any person to apply to the District Court, North Goa, Panaji, for an injunction for the removal or alteration of any illegal structure. In other words, if the Corporation or any other person finds that someone has constructed an illegal building or has altered a structure illegally, then the Corporation or such person is entitled to apply for an injunction to the District Court for the removal or alteration of such a building in accordance with the provisions of the Section.

7. It is, therefore, clear that the aforesaid Section does not provide a forum to a person to whom a final notice of demolition of a structure made by him is issued. Such a person is bound, even as observed by the learned District

Judge, to appeal against such an order under Section 358 of the Act, which reads as follows:-

> **"S.358. Order passed under this Act and the rules thereunder. -**
>
> (1) If any person aggrieved by any order passed under this Act or under any rule or bye-law made thereunder, does not receive the address to which he considers himself entitled, he may appeal to any Corporation officer who has been appointed by the Commissioner to hear such appeals, or failing such appointment, to the Commissioner.
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> (2) Any order passed in appeal by any Corporation officer, other than the Commissioner, shall be subject to revision by the Commissioner.
>
> (3) If the original order has been passed by the Commissioner himself, the appeal shall lie to the State Government or such person as it may direct."

8. In the present case, since the final notice for demolition has been issued by the Commissioner himself, the appeal would lie to the State Government or such person as it may direct. In any case, the District Court, North Goa, has no power to entertain any appeal or an application and, therefore, an application for injunction by a person to whom a final notice of demolition is issued.

9. In this view of the matter, the revision applications must be and are hereby allowed. The impugned Orders of the District Court, North Goa at Panaji, are hereby set aside on the ground that the District Court has no power to entertain the said appeals or any application for

injunction there. Shri Menezes, learned counsel for the respondents prays that their structures would be liable to be demolished by the Corporation in case the appeals filed by them before the District Court are dismissed. He, therefore, prays for protection of the structures. I, therefore, consider it appropriate in the interests of justice to direct the petitioner not to demolish the structures in question for a period of thirty days from today, to enable the respondents to resort to such remedy as may be available to them in law.

S.A. BOBDE, J.

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